

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 FOR THE COUNTY OF YAVAPAI

2012 FEB 15 AM 8:55

SANDRA A HARKMAIL CLERK

BY: C. Hunt

STATE OF ARIZONA,)

Plaintiff,)

vs.)

JAMES ARTHUR RAY,)

Defendant.)

Case No. V1300CR201080049

Court of Appeals

Case No. 1 CA-CR 11-0895

REPORTER'S TRANSCRIPT OF PROCEEDINGS
 BEFORE THE HONORABLE WARREN R. DARROW

CASE MANAGEMENT CONFERENCE
 REQUEST FOR IN-CAMERA REVIEW OF
 AUTOPSY REPORTS AND PHOTOGRAPHS

MARCH 16, 2010

Camp Verde, Arizona

ORIGINAL

REPORTED BY
 MINA G. HUNT
 AZ CR NO. 50619
 CA CSR NO. 8335

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 FOR THE COUNTY OF YAVAPAI
3
4 STATE OF ARIZONA,)
5 Plaintiff,)
6 vs) Case No V1300CR201080049
7 JAMES ARTHUR RAY,) Court of Appeals
8 Defendant) Case No 1 CA-CR 11-0895
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14 BEFORE THE HONORABLE WARREN R DARROW
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16 REQUEST FOR IN-CAMERA REVIEW OF
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24 REPORTED BY
25 MINA G HUNT
AZ CR NO 50619
CA CSR NO 8335

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1 Proceedings had before the Honorable
2 WARREN R DARROW, Judge, taken on Tuesday,
3 March 16, 2010, at Yavapai County Superior Court,
4 Division Pro Tem B, 2840 North Commonwealth Drive,
5 Camp Verde, Arizona, before Mina G. Hunt, Certified
6 Reporter within and for the State of Arizona

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PROCEEDINGS

1 THE COURT: V1300CR201080049, State versus
2 James Arthur Ray. I'm going to announce the people
3 who are appearing in person. Mr. Ray is present
4 with his attorneys, Mr. Li and Mr. Kelly. Ms. Polk
5 is representing the state.

6 And there are people who are either
7 appearing telephonically or who will be present
8 telephonically. And I want to go through and call
9 the names of those people and make sure that they
10 are on the line.

11 Brad Brian, cocounsel for the defendant?

12 MR. BRIAN: I'm here.

13 THE COURT: And then Shannon Clark, on behalf
14 of the Shore family?

15 MR. CLARK: That's right, Your Honor. Good
16 morning.

17 THE COURT: Good morning.

18 And George Brown?

19 MR. BROWN: Yes. I'm here. Thank you.

20 THE COURT: Andrea Puckett?

21 MS. PUCKETT: Yes. I'm here as well.

22 THE COURT: And Virginia Shore?

23 MS. SHORE: Yes. I'm here.

24 THE COURT: Thank you. This is the --

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1 MR. MOESER: Chris Moeser. I'm here on behalf
2 of KPNX Broadcasting.

3 THE COURT: Mr. Moeser, on behalf of KPNX, the
4 intervener and public records issue we're going to
5 discuss in a moment.

6 This is the time set for a case
7 management conference. I discussed that this would
8 be the day to have a trial setting. I hope you've
9 been thinking about that. But initially there is a
10 pending legal issue. It involves the state's
11 request for in-camera review of autopsy reports and
12 photographs.

13 I'll ask Ms. Polk first. I've read the
14 submissions of the state and the other interested
15 persons, the intervenor.

16 Ms. Polk, did you have anything to add to
17 that?

18 MS. POLK: Your Honor, nothing in terms of the
19 law. On this issue it does appear to me that
20 perhaps we have consensus among all parties that
21 are represented here today. The state's position
22 is that the first page of each autopsy report as
23 well as the summary and opinion that appears on the
24 last page of the autopsy report will be public
25 record, that the body of the report that details

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1 very private issues about the victims should not be
2 released and that the photographs should not be
3 released.

4 I believe that's the position of
5 attorneys that represent the victims. And I
6 believe that's also the position of the attorney
7 for KPNX.

8 THE COURT: Okay. Thank you, Ms. Polk.

9 Anybody else want to be heard?

10 MR. LI: We have no objection.

11 THE COURT: Mr. Moeser?

12 MR. MOESER: Your Honor, the only thing I
13 would add to that is that KPNX has not seen what's
14 in the balance of those autopsy reports. We would
15 just ask that the Court in conducting in-camera
16 review of those records balance the private,
17 personal types of information, like detailed
18 medical information, information such as that,
19 against the public's right to know information that
20 would shed light on the government's conduct of the
21 investigation or the official activities of the
22 government under the Schoeneweis case.

23 And I think that the state has stated
24 that correctly. The Court can balance those
25 factors, and any information that does, in fact,

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1 shed light under Schoeneweis on government
2 activities should be released to the public as
3 promptly as possible.

4 As we point out, KPNX has not requested
5 to inspect the autopsy photographs and, frankly,
6 doesn't seek other information that is purely
7 personal or would be considered private.

8 THE COURT: Thank you.

9 Mr. Murphy, you are appearing here today
10 also?

11 MR. MURPHY: I am, Your Honor. Let me
12 introduce Robert Magnanini. You've heard from him
13 on the telephone in one of your other hearings.
14 Bob and I represent the Brown family.

15 Ms. Polk stated our position quite well.
16 We do not take issue with what is a professional
17 and responsible position by KPNX. What we are very
18 concerned about is we don't know that everybody
19 that makes a public records request is going to
20 have the same kind of responsibility that KPNX has
21 shown. And there are a lot of strange people out
22 there in "public record requestville."

23 And we want to make certain that whatever
24 policy you establish is really going to recognize
25 this privacy issue of the families. And I think I

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1 probably speak for all the victims, certainly for
2 the Brown family, that the autopsy photos ought not
3 ever to be disclosed.

4 What the state has proposed and what the
5 victims have joined in terms of the first page of
6 these reports and the conclusory paragraph seems to
7 me to satisfy the public's right to know. And then
8 the particular details of those autopsy reports,
9 such as how much does an organ weigh or something
10 that have sort -- that's peculiar to the family
11 privacy, and decency ought to prevail.

12 And we too request that you conduct an
13 in-camera inspection before any public record
14 request is given or any public information is given
15 beyond that which the state has already indicated
16 that it will give.

17 THE COURT: Thank you.

18 MR. MAGNANINI: Your Honor, if I may. Long
19 before there was a motion, my clients had -- I had
20 asked them if they wanted the autopsy report. And
21 they categorically said, no. We do not want to see
22 that.

23 So I'd ask that when you conduct the
24 in-camera request, you keep their request to me in
25 mind. They had not wanted to see that, not from me

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1 nor from the state. And it shouldn't have to see
2 that publicly.

3 I know it's a balancing test, but the --
4 I believe in this case the state's already had four
5 productions of documents. And there is a
6 tremendous amount of paper that allows the public
7 to see what the government did in its investigation
8 here, that none of the personal data in the autopsy
9 report is going to enter that.

10 THE COURT: Thank you.

11 The disclosure I would be ordering would
12 be done through the state. So Ms. Polk, I think,
13 has heard your request in that regard.

14 MR. CLARK: Shannon Clark, on behalf of the
15 Shore family. And I guess I would just echo the
16 comments Mr. Murphy made. I think if you do
17 conduct your in-camera review, you will find that
18 the portions of the autopsy report that no party
19 has apparently requested really do have to do with
20 intensely personal stuff. It describes body parts
21 and organs and things that really the public
22 doesn't have any interest in knowing and, frankly,
23 doesn't shed any light on the conduct of any state
24 officials on the case as well.

25 With that caveat, I will -- I was pleased

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1 to see there is, essentially, consensus that no
2 autopsy photographs will be produced or requested
3 and we will just keep producing the limited and
4 redacted portion of the report to discuss.

5 THE COURT: Thank you, Mr. Clark.

6 Did anyone else wish to be heard on this?

7 MR. DIESEL: This is Lou Diesel of Aspey,
8 Watkins & Diesel. We represent the Neuman family.
9 Andrea is on the phone. We, of course, concur with
10 the comments of prior counsel. And my clients also
11 would prefer that autopsy reports not to be
12 released, the contents of it. The first page, last
13 page, conclusory remarks are sufficient.
14 Photographs, of course not. It is certainly
15 something very private to them, and we would like
16 them not to be released.

17 THE COURT: Thank you, Mr. Diesel.

18 Anybody else wish to be heard on this
19 point?

20 Well, I have considered the state's
21 request for an in-camera review of autopsy reports
22 and photographs. I've also considered the
23 responses and the memoranda the representatives of
24 the alleged victims and of the intervener, KPNX
25 Broadcasting Company.

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1 I've reviewed the -- I have reviewed the
2 autopsy reports and a limited number of
3 photographs. All of the records and photographs in
4 question are public records. As required by
5 Arizona law, I have balanced the strong public
6 interest in disclosure against the ongoing privacy
7 interests of the families involved.

8 I conclude that the privacy interests
9 weigh heavily in this matter and that the
10 disclosure proposed by the state is appropriate and
11 in keeping with the primary purpose of the public
12 records law, that purpose being to ensure that the
13 people are able to monitor the activities of their
14 government, not the lives of their fellow citizens.

15 Disclosing the photographs and the
16 detailed accounts of the physical and anatomical
17 observations and procedures conducted by the
18 medical examiners would not serve the purpose of
19 the public records law.

20 Therefore, it is ordered that only the
21 first page and the final summary and opinion
22 paragraphs of the autopsy reports will be
23 disclosed. Disclosure is to occur promptly.
24 Photographs will not be disclosed.

25 As I mentioned earlier, the disclosure

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1 will be through the county attorney's office. The
2 reports submitted to me for review will be under
3 seal, not to be opened or viewed unless there is
4 further order of the Court.

5 Ms. Polk, anything further on that issue?

6 MS. POLK: No, Your Honor. Thank you.

7 THE COURT: Thank you.

8 Now the case management conference
9 aspect. As I indicated, I did want to have the
10 trial setting today. If the parties are ready to
11 do that, I would encourage that. But is there
12 anything else that anybody would like to discuss
13 before we do that?

14 Ms. Polk.

15 MS. POLK: Your Honor, the state has a second
16 request for court determination pending with
17 respect to public records. And that has to do with
18 two requests we received for the phone calls
19 between the defendant and the public while he was
20 incarcerated, as well as the inmate visitor roster,
21 the jail visitor roster.

22 THE COURT: I am preparing written rulings on
23 that and also on the question of extrajudicial
24 statements, or the gag order.

25 MS. POLK: Thank you.

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1 THE COURT: There will be written orders on
2 those.

3 Anything else, Ms. Polk?

4 MS. POLK: No, Your Honor.

5 THE COURT: Mr. Li or Mr. Kelly?

6 MR. LI: No, Your Honor.

7 MR. KELLY: No. Thank you.

8 THE COURT: Okay.

9 I'd like to have, then, the parties'
10 proposed trial dates and amount of time necessary,
11 when trial could be conducted.

12 What's the state's view of that,
13 Ms. Polk?

14 MS. POLK: Thank you, Your Honor. The
15 calculation of Rule 8 time, to the best of our
16 ability, is under Rule 8 is a simple case. Our
17 last day is August 7 of 2010. Should this case be
18 designated a complex case, thereby giving us 270
19 days to try the case, the last day, by my
20 calculation, is November 5 of 2010.

21 And the state has no opposition to
22 designation of this case as a complex case. But I
23 would leave it up to the defense and to the Court
24 to take positions on that matter.

25 We have met, Your Honor, to make a

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1 preliminary determination of the length of time.

2 Our best calculation is that we would have
3 approximately 60 witnesses. And we anticipate
4 needing 45 trial days for the case. Our
5 calculation is also that this would require a
6 12-person jury because the maximum time that the
7 defendant faces exceeds 30 years.

8 THE COURT: Thank you.

9 Mr. Li or Mr. Kelly.

10 MR. LI: Your Honor, from the defense
11 perspective, we just want a date certain. And so
12 we'd like to work with the Court and with the state
13 as to what the appropriate day is. And I don't
14 have a sense for what the Court's calendar is like
15 and whether there is a lot of matters on calendar
16 over the summer. So we were thinking sometime in
17 the early fall.

18 MR. KELLY: Judge, if I may. Obviously a
19 little more familiar with the trial schedule for
20 this particular division. But I believe Mr. Li and
21 I had a question as to whether or not given the
22 state's estimate as to the length of trial, which
23 we've communicated with Mr. Hughes -- we were aware
24 of that prior to this hearing -- whether or not we
25 could expand the trial week to include Tuesday.

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1 45 days at three days per week plus, of
2 course, that omits necessary time for the defense
3 case. It would be literally a four- or five-month
4 trial. And if we could shorten that time period,
5 that would be our request. And, of course, we're
6 acutely aware of the Courts' scheduling and the
7 other cases that it manages. But our request would
8 be to expand the trial week Tuesday through Friday.
9 Also, Judge, we agree with the state that it
10 requires a 12-person jury.

11 THE COURT: I, essentially, agreed with the
12 state's calculation of Rule 8 time. I had August 9
13 time falling on the weekend.

14 MR. KELLY: And, Judge, the other question
15 regards to whether or not this is a complex case, I
16 believe we'd leave that to your discretion. I
17 don't believe, we believe, it is. However, if the
18 state is going to call 60 witnesses, the length of
19 time creates a calendar concern that we're aware
20 of.

21 Regardless, Mr. Ray is out of custody.
22 We'd waive Rule 8 time periods to set a reasonable
23 time, as Mr. Li stated, a date certain that we can
24 rely on.

25 THE COURT: Thank you.

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1 Under any of the -- or either of the
2 estimates, three to four months of trial is being
3 proposed. Four-day trial week would make sense to
4 do that if it can be worked in with just the other
5 matters that the Court will have to be handling.

6 What I'd like to do at this time is I'd
7 like to take a recess and have counsel get their
8 calendars. And if you're amenable to this, meet
9 with my JA. Let's get some time blocked out. Look
10 at the aspect of reserving Tuesdays and then
11 reassemble. And we'll be able to announce the
12 trial times.

13 Any objection to that, Ms. Polk?

14 MS. POLK: No, Your Honor.

15 MR. LI: No, Your Honor.

16 THE COURT: Okay. Then we're going to take a
17 recess here. And for the people who are on the
18 phone, there will be a pause. And I'm going to be
19 muting the microphones. Otherwise they will stay
20 on and people can hear wherever they are. But
21 we'll take a recess, then, for probably 10 or 15
22 minutes or so and discuss the trial scheduling.

23 Thank you.

24 (Recess.)

25 THE COURT: Back on the record with the
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1 defendant and counsel present. I'm informed that
2 also the phone line has been reactivated. So
3 people present in that fashion should be able to
4 hear as well.

5 I have talked to the attorneys about
6 scheduling trial. And given the estimates for the
7 time of trial, there will be 56 days that will be
8 calendared initially for this trial. As discussed
9 informally -- we'll put all this on the record --
10 that may change as discovery and disclosure
11 continues through the case. But at least for now
12 there will be 56 days allowed.

13 And I'm going to announce the first week
14 of trial and just the general parameter for the
15 trial. The minute entry will contain the specific
16 days for trial. Trial roughly 9:00 to 5:00 on the
17 days indicated. First day I start trial a little
18 later. I designated it as 9:30, pretrial
19 conference at 8:30. But that's roughly the time
20 for the trial.

21 With the rules now, juries can't be kept
22 past 5:00 o'clock unless they all agree to do that.

23 So it is ordered setting this matter for
24 a jury trial for a 12-person jury, the amount of
25 time allotted, 56 days.

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1 The first week of the trial will be
2 August 31 and September 1st and 2nd. All these
3 dates are 2010, of course. As indicated, trial to
4 begin at 9:30 a.m., August 31; pretrial conference
5 at 8:30 a.m. that same day.

6 The trial, then, will continue on various
7 days through and including December 17. There will
8 be four-day trial weeks as a rule. During holidays
9 there will be one day less, will have to be a
10 three-day week so there can be a law and motion
11 calendar on those weeks.

12 But, essentially, the trial runs from
13 August 31st through December 17 at this time
14 anyway. I'm going to accelerate some of the dates
15 that I normally set.

16 Any exhibits that the parties want to
17 offer at trial are to be provided to the clerk for
18 marking no later than August 18. Again, all dates
19 2010, of course.

20 The parties are to exchange final lists
21 of witnesses and exhibits with notice to the Court
22 no later than July 23rd. And when I talk about
23 exchanging lists of exhibits and witnesses, I'm not
24 changing disclosure rules, disclosure deadlines, in
25 any way. I always look at that as a way to ensure

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1 that if something happens to be left out -- it's
2 for the oversight really -- that a matter can be
3 addressed then as opposed to actually during the
4 trial. So that's what I mean by final list of
5 exhibits, witnesses. I'm not changing the rules in
6 any way.

7 The date I had announced for the
8 submission of exhibits to the clerk for marking,
9 that's also the deadline to submit proposed voir
10 dire and jury instructions as well.

11 Any motions in this case are to be filed
12 on or before July 9, with response and reply in
13 accordance with the rules of criminal procedure.

14 I want to set periodic status conferences
15 or pretrial conferences. And the next one will be
16 set for April 26 at 9:00 a.m. April 26 at
17 9:00 a.m.

18 Counsel, any other dates that you want to
19 have set just in terms of trial management, case
20 management?

21 Ms. Polk?

22 MS. POLK: No, Your Honor.

23 THE COURT: Mr. Kelly, Mr. Li?

24 MR. KELLY: Judge, I had two thoughts. One is
25 in regards to the selection of the jury itself,

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1 whether it would be preferable to do that in a
2 larger courtroom in Prescott. I anticipate a large
3 jury pool given the media coverage. And in
4 addition to that, of course, we have many people
5 who are interested in the outcome of this case.

6 And all candor, I just don't think the
7 courtroom is large enough, Judge. So I'd ask you
8 to consider that.

9 The second thing Mr. Li and I considered
10 is whether it would be appropriate today to
11 schedule tentatively at least several days for
12 pretrial evidentiary matters prior to the beginning
13 of trial. Something I meant to mention when we
14 were back in chambers. But I would anticipate that
15 we would need at least two if not three days of
16 your time.

17 MR. BRIAN: This is Brad Brian. I'm glad
18 Mr. Kelly raised that. I was going to mention the
19 same thing and would hope the Court would consider
20 doing that at least a couple of weeks before trial.

21 THE COURT: I did set the motion date fairly
22 late. I think that's a good idea. But, again,
23 it's going to take looking at calendars.

24 MR. BRIAN: Possibly the Court could take it
25 up at the next case management conference, and

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1 maybe we can consult with Ms. Polk about what would
2 be appropriate to schedule.

3 But I would think the Court -- it would
4 be beneficial to the Court and all the parties to
5 have heard that some sufficient time before trial
6 so the Court could consider and make rulings prior
7 to the commencement of trial.

8 THE COURT: I think if we get that done by
9 April 26, there will be time to find a place on the
10 calendar to hear motions.

11 Ms. Polk.

12 MS. POLK: I think so as well, Judge.

13 THE COURT: Okay. So we'll just --

14 Mr. Kelly, if a motion is filed, it will
15 be schedule for hearing. And that will get the
16 process going as well. But we will address that on
17 April 26.

18 Anything else in terms of case management
19 or trial management?

20 MS. POLK: Your Honor, with the start date of
21 August 31, the Court would need to exclude time.

22 THE COURT: And I understood, Mr. Kelly, you
23 were waiving time earlier. You agreed that time
24 would be excluded. It wouldn't be required if it's
25 a complex case. But let's make that clear.

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1 MR. KELLY: We're waiving time. And, again,
2 we're not taking the position this is a complex
3 case under the rules.

4 THE COURT: Mr. Li.

5 MR. LI: We just want a date certain.

6 THE COURT: So time is excluded. And I'm
7 confirming the existing conditions of release as
8 well. And I always do have general advisements
9 about the trial. And it's set. I always advise
10 someone in Mr. Ray's position of this:

11 Now that a trial is set, the person does
12 have to appear at trial. If the person doesn't
13 appear, there can be various things that happen.
14 For example, trial can take place without the
15 person. There can be a warrant issued for arrest,
16 forfeiture of bond, and even the possibility of
17 additional charges. So obviously the person is
18 required to appear at the trial.

19 You understand that, Mr. Ray?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Then, Ms. Polk, anything else you
22 would like to discuss here this morning?

23 MS. POLK: No, Your Honor. Thank you.

24 THE COURT: From the defense?

25 MR. BRIAN: One thought with respect to the

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1 appearance of Mr. Ray. Because of the expense
2 issues and the fact that he's out of town, does he
3 have to appear at all pretrial proceedings? For
4 example, if we have schedule matters, can we waive
5 appearance for those?

6 THE COURT: Normally I do not require that if
7 it's a matter of scheduling, if it's just something
8 that's going to be discussed among the attorneys.

9 Ms. Polk, do you have any input?

10 MS. POLK: Your Honor, generally I would have
11 no objection. But I would request that counsel
12 file an appropriate pleading for each hearing.

13 THE COURT: We've got the trial set.

14 Actually -- well, trial has been set. That
15 procedure is followed as well. So just if you're
16 wishing to have nonappearance granted, just file
17 something to notify the Court of that.

18 MR. LI: We'll do that, Your Honor.

19 THE COURT: Thank you.

20 Anything else?

21 MS. POLK: No, Your Honor. Thank you.

22 THE COURT: From the defense?

23 MR. KELLY: No, Judge. Thank you.

24 THE COURT: Thank you. We'll be in recess,
25 then. I'll go ahead and disconnect the people on

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1 the phone. Thank you very much.
 2 (The proceedings concluded.)
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1 STATE OF ARIZONA)
 2 COUNTY OF YAVAPAI) ss. REPORTER'S CERTIFICATE
 3

4 I, Mina G. Hunt, do hereby certify that I
 5 am a Certified Reporter within the State of Arizona
 6 and Certified Shorthand Reporter in California

7 I further certify that these proceedings
 8 were taken in shorthand by me at the time and place
 9 herein set forth, and were thereafter reduced to
 10 typewritten form, and that the foregoing
 11 constitutes a true and correct transcript

12 I further certify that I am not related
 13 to, employed by, nor of counsel for any of the
 14 parties or attorneys herein, nor otherwise
 15 interested in the result of the within action

16 In witness whereof, I have affixed my
 17 signature this 13th day of February, 2012
 18
 19
 20
 21
 22

23 -----
 24 MINA G. HUNT, AZ CR No. 50619
 25 CA CSR No. 8335

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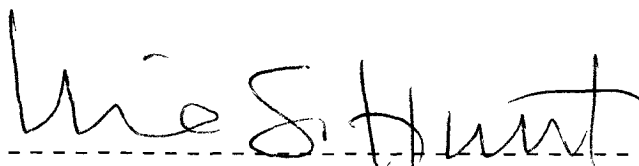
1 STATE OF ARIZONA)
2) ss: REPORTER'S CERTIFICATE
3 COUNTY OF YAVAPAI)

4 I, Mina G. Hunt, do hereby certify that I
5 am a Certified Reporter within the State of Arizona
6 and Certified Shorthand Reporter in California.

7 I further certify that these proceedings
8 were taken in shorthand by me at the time and place
9 herein set forth, and were thereafter reduced to
10 typewritten form, and that the foregoing
11 constitutes a true and correct transcript.

12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action.

16 In witness whereof, I have affixed my
17 signature this 13th day of February, 2012.

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23 -----
24 MINA G. HUNT, AZ CR No. 50619
25 CA CSR No. 8335